



Georgia Secretary of State
Brian P. Kemp



2012 INVESTMENT ADVISER SWITCH TO STATE REGISTRATION



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The IA Switch

- ▶ **What is the IA Switch?** The "switch" is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was signed into law on July 21, 2010. The Dodd-Frank Act made significant changes to the federal registration provisions for investment advisers and will require many firms to "switch" their registration from the U.S. Securities & Exchange Commission ("SEC") to state securities registration.



Dodd-Frank Section 410

- ▶ Mid-sized investment adviser.
 - ▶ AUM of \$25- \$100 million.
 - ▶ Principal office and place of business in a state where IA is required to be registered and, if registered, is subject to examination.
 - ▶ If exempt or excluded in state where principal office is located then SEC registration unless exempt from SEC registration.
 - ▶ NY and WY based advisers excluded.
- ▶ Investment advisers required to register in 15 or more states can register with the SEC.



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Registration for Mid-Sized IAs

- ▶ Mid-sized advisers registered with the SEC as of 1/1/2012 (the “Switch”).
 - ▶ Mid-sized advisers registered with the SEC on 7/21/11 must remain SEC registered until 1/1/12.
 - ▶ File amendment to ADV between 1/1/12 - 3/30/12.
 - ▶ Mid-sized advisers no longer eligible for SEC registration must file ADV-W by 6/28/12.
- ▶ “New” Mid-sized advisers.
 - ▶ Until 7/21/2011 could have registered with either the SEC **or** appropriate state regulator.
 - ▶ After 7/21/2011 must have registered with the appropriate state regulator (prohibited from SEC registration).
 - ▶ Advisers with AUM of \$100 million or more continue to register with SEC.



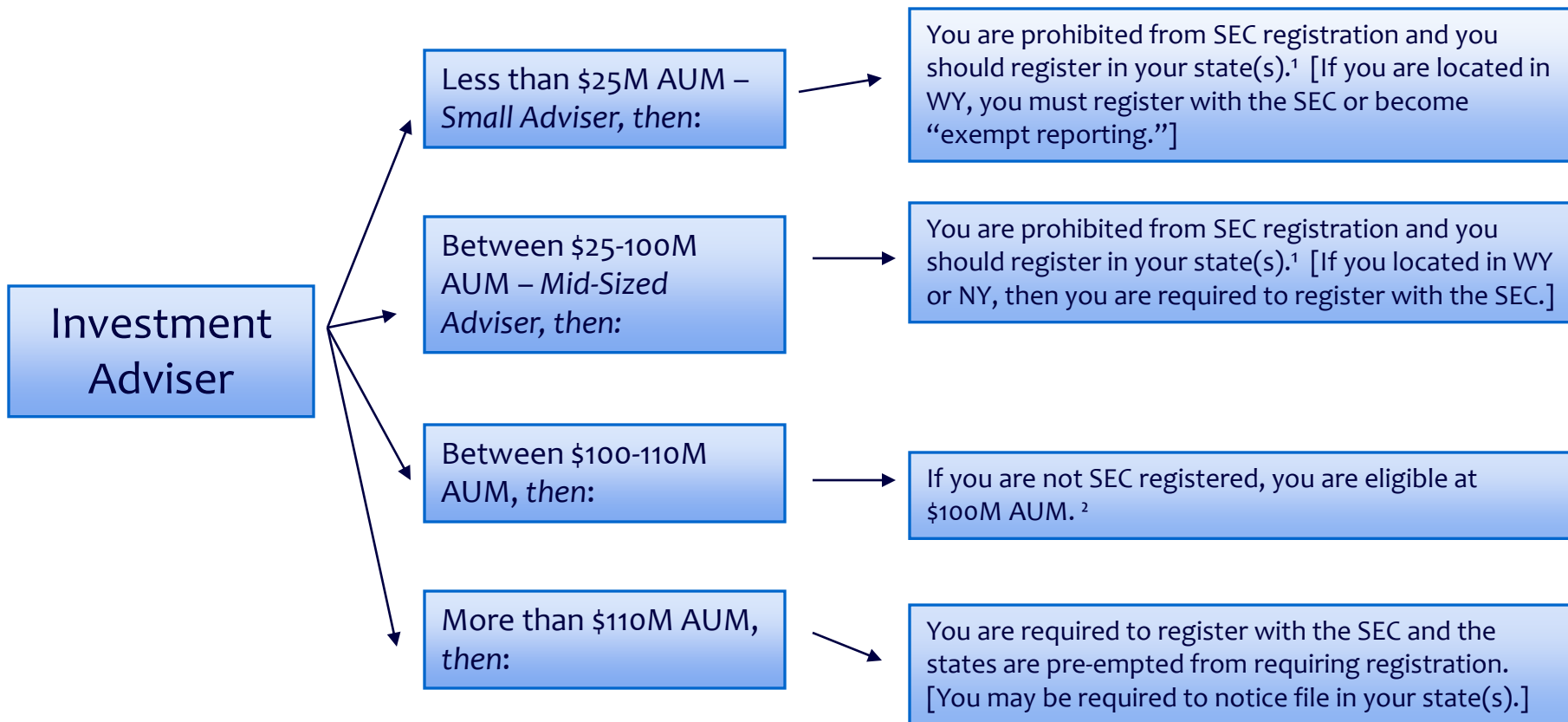
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AUM Buffer

- ▶ Current buffer.
 - ▶ \$25 million - \$30 million eliminated.
- ▶ New buffer.
 - ▶ \$90 million - \$110 million.
 - ▶ An adviser may register with the SEC once it reaches AUM of \$100 million. An adviser must register with the SEC if its AUM is \$110 million or more.
 - ▶ Once registered with the SEC, a mid-sized adviser can remain registered with the SEC as long as its AUM is at least \$90 million. This means that a mid-sized adviser currently registered with the SEC may remain registered with the SEC if the adviser's AUM is at least \$90 million.

Investment Adviser Registration Flowchart



1. Unless required to register in 15 or more states, in which case you can choose to register with the SEC.

2. If you are an SEC registrant, you need not de-register with the Commission and register with the states until your assets under management drops below \$90M.



Private Fund Advisers

- ▶ Section 403 of Dodd-Frank repealed the “private adviser exemption” found in Section 203(b)(3) of the Investment Advisers Act. As a result, the manager of a pooled investment vehicle (“private fund”) must register as an investment adviser, unless the manager can rely upon a different exemption.
- ▶ Sections 407 & 408 of Dodd-Frank created two new exemptions for advisers to private funds (a private fund is defined as either a 3(c)(1) or 3(c)(7) fund).



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Private Fund Advisers

- ▶ New § 203(m) of the of the Investment Advisers Act as amended by Dodd-Frank creates an exemption for advisers solely to private funds who have less than \$150 million in assets under management (AUM).
- ▶ New § 203(l) of the Investment Advisers Act as amended by Dodd-Frank creates an exemption for advisers solely to a “venture capital fund.” The SEC has adopted a definition of venture capital fund in SEC Rule 203(l)-1.
- ▶ These investment advisers who are exempt from registration but must file reports with the SEC will be referred to as “exempt reporting advisers.”



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Advisers to Private Funds: SEC Registration/Reporting

SEC Registration

- ▶ Advisers previously exempt pursuant to the private adviser exemption (203(b)(3)).
- ▶ Advisers to private funds with \$150 million in AUM or more.
- ▶ Use form ADV.
- ▶ Deadline for registration is 3/30/12.

SEC Reporting

- ▶ Advisers solely to private funds with less than \$150 million AUM.
- ▶ Advisers to VC funds as defined by the SEC regardless of AUM.
- ▶ ADV items 1, 2B, 3, 6, 7, 10 and 11 plus corresponding schedules.
- ▶ Reports must be filed between 1/1/12 – 3/30/12

Private Fund Adviser Registration Flowchart

Private Fund Advisers²

Less than \$25M AUM –
Small Adviser, then:

You are prohibited from SEC registration and you should register in your state(s).⁵ [If in WY, then (1) you are required to register with the SEC, or (2) you can claim an exemption from SEC registration [203(m)] and become “exempt reporting.”]

Between \$25-100M
AUM – *Mid-Sized
Adviser, then:*

You are prohibited from SEC registration and you should register in your state(s).⁵ [If you are located in WY or NY, then (1) you are required to register with the SEC, or (2) you can claim an exemption from SEC registration [203(m)] and become “exempt reporting.”]

If your state adopts an exemption from registration, then you can register with the SEC or choose to become “exempt reporting” [203(m)].

Less than \$150M AUM,
then either:

You can claim an exemption from SEC registration [203(m)] and become “exempt reporting,” but you may also be required to register in your state(s).

or

You can choose not to claim the available exemption from SEC registration [203(m)] and be treated the same as a traditional investment adviser.

\$150M and Over AUM,
then:

You are required to register with the SEC. [You may be required to notice file with your state(s).] **If** you are an investment adviser to a **Venture Capital Fund**⁴ of this size, then you can claim an exemption from SEC registration [203(l)] but will be “exempt reporting” and may still need to register with your state(s) unless the state has or adopts an applicable exemption.

1. “Private Fund” means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but which meets the exemption requirements described in section 3(c)(1) or 3(c)(7) of that Act [Advisers Act § 202(a)(29), added by DFA § 402].

2. “Private Fund Advisers” are those investment advisers advising solely “private funds” as described above. Therefore, if the adviser has one or more clients that are not private funds, you should refer to the “Investment Adviser” flowchart.

3. “Exempt Reporting” refers to an investment adviser solely to a private fund who relies on an exemption from SEC registration but would be required to provide certain reports to the SEC [Advisers Act § 203(m) as added by DFA § 408]. An adviser who is “exempt reporting” may also be subject to registration by a state.

4. “Venture Capital Fund” refers to an investment adviser to a venture capital fund to be defined by rule [Advisers Act § 203(l), as added by DFA § 407].

5. Unless required to register in more than 15 states, in which case you can choose to register with the SEC.



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Georgia De Minimis Exemption

- ▶ Georgia Rule 590-4-4-.13
- ▶ Any investment adviser who during the course of the preceding 12 months has had fewer than six clients in Georgia is exempt from registration.
 - Applicable to in-state investment advisers.
- ▶ Who is considered a client?
 - Any “legal organization” that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (“owners”).



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Coordinated Review Program

- ▶ Advisers registering in 4 or more states.
- ▶ Dates of program – November through March
- ▶ How the program works:
 - ▶ Advisers notify NASAA via website (www.nasaa.org)
 - ▶ Program manager schedules calls with states.
 - ▶ States review deficiencies.
 - ▶ States prepare deficiency letters.
 - ▶ Advisers respond to states and resolve deficiencies.
- ▶ FAQ's about the program can be found on NASAA's website under the IA Switch Resource Center.



ADV Part 1A Enhancements

- ▶ IARD has updated its system to accommodate these enhancements.



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Key Changes to Part 1A of Form ADV

- ▶ Revisions necessary to implement increased AUM threshold and “reporting” option.
 - ▶ **Item 2**
- ▶ Significant changes to accommodate reporting requirements for Private Fund Advisers.
 - ▶ **Page I**
 - ▶ **Item 7 and Schedule D**
- ▶ More information on types of clients.
 - ▶ **Item 5**
- ▶ Specific non-advisory services or products
 - ▶ **Item 6**



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Frequently Asked Questions

Q: Should investment advisers begin registering with states now?

A: Investment advisers can begin applying now and should initiate registration with the states as soon as possible. Early application submission will help facilitate a smooth transition to state registration. Georgia does not charge an additional filing fee for switching from SEC to state registration. **Do not terminate your SEC registration until you finalize your state registration.**

Q: What is the registration process timeline?

A: The timeline will depend on when your application for registration is received, how many applications GA receives, and the complexity of your registration. Once your entire application has been received, you will be notified of any additional documents that may be required. The registration process cannot begin until GA receives all of the required documents.

Q: What are Georgia's requirements for investment adviser registration?

A: They include submission of Form ADV Part 1 and Part 2. For easy reference to the specific requirements, please visit our website at http://sos.georgia.gov/securities/investment_advisor.htm. Requirements for investment adviser representative registration may also be found here.



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Frequently Asked Questions (cont'd)

Q: How do I switch to a Georgia-registered investment adviser from a Federal Covered Investment Adviser?

A: To initiate state registration, go to the Investment Adviser Registration Depository ("IARD") system and amend Form ADV Part 1B to request "Georgia" registration and import into the IARD System an amended copy of your Form ADV Part 2 and any brochure(s) or disclosure document(s) delivered to clients. Detailed instructions can be found on the IARD User's Manual (Chapter 5; Pages 5-29) available at http://www.iard.com/firm_users_man.asp.

Q: Where can I find the new Part 2 with the instructions?

A: The North American Securities Administrators Association ("NASAA") has updated the Investment Adviser and Forms sections of the NASAA website to include the new Form ADV Part 2 and instructions:
<http://www.nasaa.org/industry-resources/investment-advisers/uniform-forms/form-adv/>

Q: Will Georgia make any recommendations for any consulting firms?

A: No. As a governmental agency, GA is precluded from making any recommendations endorsing particular consulting firms or attorneys.



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Frequently Asked Questions (cont'd)

Q: Where can I get technical assistance about filing through IARD?

A: For technical questions about IARD, please call the Gateway Call Center at: (240) 386-4848.

Q: If I have Georgia specific questions about the Investment Adviser Switch, who may I call?

A: You may call our office at (478) 207-2440.